

UNITED STATES COURT OF APPEALS

JUN 10 1999

TENTH CIRCUIT

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS MALDONADO-LEON,

Defendant - Appellant.

No. 98-4135
(D. Ct. No. 98-CR-169-W)
(D. Utah)

ORDER AND JUDGMENT*

Before **TACHA, McKAY**, and **MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Defendant Maldonado-Leon appeals an order of the district court sentencing him to 77 months pursuant to a plea of guilty to a one-count indictment charging reentry of a deported alien in violation of 8 U.S.C. § 1326. It

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

is undisputed that defendant has prior felony convictions. The district court sentenced defendant to, among other provisions, 77 months imprisonment, three years supervised release, and a special assessment fee of \$100. Defendant argues on appeal that his sentence of 77 months in federal prison is too long for the illegal actions to which he pled guilty.

Defendant's counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Defendant's counsel has also filed a motion to withdraw stating that she has thoroughly reviewed the case and can find no issues to appeal. Counsel has informed the appellant of the filing of the Anders brief and further notified him that he is entitled to proceed pro se. Counsel further alleges that the defendant has failed to keep in touch with her. We grant the motion to withdraw.

The only allegation on appeal is that the sentence is too long for the offense to which defendant pled guilty. Because the district court sentenced defendant at the low end of the guideline range for the offense to which he pled guilty, we construe the issue on appeal as whether defendant was entitled to a downward departure from the sentencing guidelines. We have no jurisdiction to review a district court's discretionary refusal to depart downward from a sentence within the guideline range. See, e.g., United States v. Castillo, 140 F.3d 874, 888 (10th Cir.1998); United States v. Banta, 127 F.3d 982, 983 n. 1 (10th Cir.1997). We dismiss the appeal for lack of jurisdiction. We deny defendant's motion to

proceed in forma pauperis. DISMISSED.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge